

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #5	CCRB Case #: 201705711	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 06/29/2017 5:14 PM	Location of Incident: Corner of Madison Avenue and East 81st Street; 19th Precinct stationhouse	Precinct: 19	18 Mo. SOL 12/29/2018	EO SOL 12/29/2018	
Date/Time CV Reported Thu, 07/13/2017 4:15 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Fri, 07/14/2017 11:41 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Nelson Hernandez	14825	906453	PBMN
2. LT Kevon Sample	00000	935679	019 PCT
3. POM Ryan Odea	16557	952063	PBMN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brendan Lherisson	08888	960804	019 PCT
2. SGT Stephen Feasel	1523	933772	019 PCT
3. POF Jessica Figueroa	08633	948963	019 PCT
4. DTS Michael Lombardi	5048	936970	019 PCT
5. LT Kim Garcia	00000	926300	019 PCT
6. SGT Jayson Evert	00281	948944	019 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Nelson Hernandez	Abuse: At the corner of Madison Avenue and East 81st Street, Police Officer Nelson Hernandez interfered with § 87(2)(b) use of a recording device.	
B.POM Nelson Hernandez	Force: At the corner of Madison Avenue and East 81st Street, Police Officer Nelson Hernandez used physical force against § 87(2)(b)	
C.LT Kevon Sample	Force: At the corner of Madison Avenue and East 81st Street, Lieutenant Kevon Sample used physical force against § 87(2)(b)	
D.POM Ryan Odea	Force: At the corner of Madison Avenue and East 81st Street, Police Officer Ryan Odea used physical force against § 87(2)(b)	
E.LT Kevon Sample	Abuse: At the corner of Madison Avenue and East 81st Street, Lieutenant Kevon Sample threatened § 87(2)(b) with the use of force.	
F.POM Nelson Hernandez	Force: At the corner of Madison Avenue and East 81st Street, Police Officer Nelson Hernandez used physical force against § 87(2)(b)	
G.LT Kevon Sample	Abuse: At the 19th Precinct stationhouse, Lieutenant Kevon Sample threatened § 87(2)(b) with the use of force.	

Case Summary

§ 87(2)(b) filed this complaint in person at the 19th Precinct stationhouse on July 13, 2017.

On June 29, 2017, at approximately 5:14 p.m., § 87(2)(b) was in the vicinity of Madison Avenue and East 81st Street in Manhattan where private and public funeral ceremonies were being held for the rapper Prodigy. § 87(2)(b) became involved in an interaction with PO Nelson Hernandez of Patrol Borough Manhattan North who asked him to leave from the area. PO Hernandez interfered with § 87(2)(b) ability to record him by swiping at his cell phone (**Allegation A**). PO Hernandez allegedly pushed § 87(2)(b) multiple times in the chest down the street (**Allegation B**). Lt. Kevon Sample of the 19th Precinct became involved in trying to get § 87(2)(b) to leave the area. Lt. Sample pushed § 87(2)(b) into the street (**Allegation C**). § 87(2)(b) became involved in a physical struggle with multiple officers after it was determined he was being placed under arrest. PO Ryan Odea of Patrol Borough Manhattan North allegedly struck § 87(2)(b) with his knee multiple times and placed his knee on his head (**Allegation D**). Lt. Sample threatened to taser § 87(2)(b) (**Allegation E**). PO Hernandez stepped on § 87(2)(b) ankle (**Allegation F**). At the 19th Precinct stationhouse, Lt. Sample allegedly threatened to fight § 87(2)(b) (**Allegation G**).

§ 87(2)(b)

This case was marked as a sensitive case due to media coverage of the incident. The incident was reported by § 87(2)(b) and the § 87(2)(b). Video footage from various sources captures the incident. Summaries and links to the original video files are included in the 'Findings and Recommendations' section.

This case was originally assigned to Inv. Andrew Ridge and was reassigned on July 24, 2017. This closure of this case was delayed beyond the 90-day benchmark due to the need to interview a large number of witness officers.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation because § 87(2)(b)
- In his notice of claim, § 87(2)(b) alleges false arrest, false imprisonment, assault, battery, malicious prosecution, and deprivation of civil rights. The claim was made in the amount of \$5 million (BR01).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officers' CCRB Histories

- This is the first complaint filed by § 87(2)(b) with the CCRB (BR03).
- Lt. Sample has been a member of the service for 13 years and has one prior substantiated allegation. In case 201602595, the Board substantiated a vehicle stop allegation against

him, recommended charges, and the NYPD took no disciplinary action. In the same case, Lt. Sample has a prior allegation for allegedly threatening a civilian with the use of force which was closed as unsubstantiated by the Board. § 87(2)(g)

- PO Hernandez has been a member of the service for 23 years and has one prior substantiated allegation. In case 200902686, the Board substantiated a discourtesy allegation, recommended charges, and the NYPD enforced instructions. PO Hernandez has two prior physical force allegations which were closed as unfounded and complainant uncooperative by the Board.
- PO Odea has been a member of the service for five years and has no substantiated allegations. § 87(2)(g)

Potential Issues

- Video obtained by the investigation revealed that there were a large number of potential civilian witnesses to this incident. § 87(2)(b) testified that he was by himself and could not identify anyone at the event. Police documentation did not identify any civilian witnesses. E-mails were sent to an e-mail address associated with a YouTube account that posted a video about the incident and no response was received. Internet search engine and social media searches revealed no other videos or postings about the incident that identified any witnesses. Given the absence of any identifying information for these bystanders, the investigation was unable to interview any civilian witnesses.
- Following § 87(2)(b) interview, his civil attorney, § 87(2)(b), did not allow § 87(2)(b) to sign medical release forms for the CCRB. § 87(2)(b) stated he would forward the investigation any medical records he obtained. A follow up call was placed to § 87(2)(b) on October 17, 2017, and he had not obtained any medical records.

Findings and Recommendations

Allegation A – Abuse of Authority: At the corner of Madison Avenue and East 81st Street, Police Officer Nelson Hernandez interfered with § 87(2)(b) use of a recording device.

Allegation B – Force: At the corner of Madison Avenue and East 81st Street, Police Officer Nelson Hernandez used physical force against § 87(2)(b)

§ 87(2)(b) testified that he went to the funeral home at Madison Avenue and East 81st street to attend the funeral of the rapper Prodigy (BR04). After exiting the funeral home, § 87(2)(b) went across the street near the southwest corner of the intersection and watched for about two minutes as officers were trying to disperse people from the area. PO Hernandez approached § 87(2)(b) and asked him to leave the area. § 87(2)(b) began recording PO Hernandez with his cell phone. PO Hernandez swiped at the cell phone as § 87(2)(b) was recording. PO Hernandez pushed § 87(2)(b) in the chest five to six times as he was backing away toward the southwest corner.

§ 87(2)(b) recorded a portion of this interaction with his cell phone, a SnagIt copy of which is placed below (BR05-06). The video shows PO Hernandez swiping his hand at § 87(2)(b) as he says, “Get that out of my face.” § 87(2)(b) begins yelling at PO Hernandez and repeatedly

asks why he was touching him. § 87(2)(b) moves backwards along the sidewalk until he is beyond a metal barricade on the sidewalk. As § 87(2)(b) is moving backwards, PO Hernandez pushes his hands in the direction of § 87(2)(b). No contact between PO Hernandez and § 87(2)(b) is visible in the video. However, the possibility of contact is not eliminated by the video due to the shakiness of § 87(2)(b) recording and the camera angle of the recording.



201705711_20171113_1650_DM.mp4

PO Hernandez testified that he was instructed by a supervisor to clear pedestrians away from 81st Street near the funeral home (BR07). PO Hernandez encountered § 87(2)(b) and told him to leave. § 87(2)(b) said that he lived there but refused to show ID. PO Hernandez again told § 87(2)(b) to leave. PO Hernandez placed his hand on § 87(2)(b) shoulder and pointed toward Madison Avenue to indicate to him that he needed to go. PO Hernandez made no other physical contact with § 87(2)(b) and denied that he ever pushed him. PO Hernandez acknowledged the possibility that he touched § 87(2)(b) cell phone. After viewing the video, PO Hernandez acknowledged that he pushed the cell phone, stated that he had no reason for having done so, and expressed understanding that civilians are allowed to record officers. Seeing the video did not change PO Hernandez' account of the physical contact he made with § 87(2)(b).

NYPD Finest Message 9881632 instructs officers that “members of the service will not interfere with a person’s use of recording devices to record police interactions. Intentional interference such as blocking or obstructing cameras or ordering the person to cease constitutes censorship and also violates the First Amendment...Persons may not interfere with police operations. Members, if appropriate, should advise the public not to get too close and may take action only if the person interferes with the operation or the safety of the members of the service or the public” (BR08).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation C – Force: At the corner of Madison Avenue and East 81st Street, Lieutenant Kevon Sample used physical force against § 87(2)(b)

An attorney consulted the investigation on its analysis of this allegation.

§ 87(2)(b) testified that he went to the Northwest corner of the intersection after being shoved away by PO Hernandez. Lt. Sample approached § 87(2)(b) and told him to go home. § 87(2)(b) responded that he was waiting for the traffic light. Lt. Sample told § 87(2)(b) that

he was going to push him into the street. Lt. Sample grabbed § 87(2)(b) by the elbow and pushed him into the street and into traffic.

Video of this portion of the incident was posted to YouTube by an unknown individual, a SnagIt copy of which is placed below (BR09-10). The video shows Lt. Sample telling § 87(2)(b) that he has to go. Across the street, the walk signal is still red. A yellow taxi and a black car are seen driving through the intersection in front of them. Lt. Sample grabs § 87(2)(b) left arm and moves forward with him into the street. A car is directly next to them when Lt. Sample does this. Lt. Sample puts his hands on § 87(2)(b) back and continues moving forward with § 87(2)(b). A yellow taxi enters into the crosswalk and stops in front of them as they are crossing. Once they are across the street, the recorder of the video as well as other civilians are following across the street despite the steady stop signal.



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Another video of this incident was posted online by § 87(2)(b) a SnagIt copy of which is placed below (BR11-12). This video is recorded from the other side of the street. The video shows § 87(2)(b) coming across the street being followed by Lt. Sample. Two vehicles are seen in the crosswalk directly in front of where they are crossing. Multiple civilians are seen following Lt. Sample and § 87(2)(b) across the street.



201705711_20171115_1837_DM.mp4

Lt. Sample testified that after the funeral's scheduled end time he became involved in helping other officers disperse a large crowd from the area (BR13). Lt. Sample spoke with § 87(2)(b) at the Southwest corner of the intersection and instructed him to leave. § 87(2)(b) walked away to the Northwest corner of the intersection. Lt. Sample saw § 87(2)(b) again a few minutes later and noticed that he was standing on the sidewalk in front of the funeral home, staring in his direction. Lt. Sample approached § 87(2)(b) again and told him he had to leave. § 87(2)(b) refused to leave. Lt. Sample placed his hand on § 87(2)(b) back and guided him across the street. § 87(2)(b) pushed back as Lt. Sample was guiding him across. Lt. Sample denied that he was throwing § 87(2)(b) into the street, rather he was guiding him across the street and was going with him. Officers had been posted on the corners and were stopping traffic to facilitate people crossing the street. When shown the video that depicted vehicles crossing into the intersection, Lt. Sample did not know if any officer was directing traffic when he crossed the street with § 87(2)(b). However, traffic was moving slowly enough that it was safe for them to cross the street. Lt. Sample wanted to get § 87(2)(b) away from the funeral home at that time because his actions were causing a crowd to form, thus impeding the goal of dispersing people from the area.

PG 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (BR14).

§ 87(2)(g)

Allegation D – Force: At the corner of Madison Avenue and East 81st Street, Police Officer Ryan Odea used physical force against § 87(2)(b)

Allegation E – Abuse of Authority: At the corner of Madison Avenue and East 81st Street, Lieutenant Kevon Sample threatened § 87(2)(b) with the use of force.

Allegation F – Force: At the corner of Madison Avenue and East 81st Street, Police Officer Nelson Hernandez used physical force against § 87(2)(b)

§ 87(2)(b) testified that Lt. Sample grabbed his arm and tried pulling it behind his back. § 87(2)(b) stiffened up because he felt that the arrest was unjustified. § 87(2)(b) was dropped to the ground but he could not describe how this occurred. PO Odea slid toward § 87(2)(b) and struck him in the lip with his knee. Once on the ground, § 87(2)(b) continued to tense his body. Lt. Sample told § 87(2)(b) “I’m going to Tase you.” § 87(2)(b) flipped over and saw Lt. Sample pointing a Taser at him. § 87(2)(b) complained to Lt. Sample that being Tasered could kill him. Lt. Sample put the Taser away. § 87(2)(b) allowed himself to be rolled back over into a face-down position. § 87(2)(b) denied he was doing anything with his body after he was flipped over. PO Odea kned § 87(2)(b) in the ribs four or five times. PO Odea put his knee on the left side of § 87(2)(b) head. PO Hernandez stepped on § 87(2)(b) foot. § 87(2)(b) was handcuffed and taken to a police vehicle to be transported to the stationhouse.

§ 87(2)(b) reported that he sustained lacerations on the left side of his head from PO Odea placing his knee atop it. These injuries were reportedly bandaged by EMTs who treated § 87(2)(b) at the stationhouse. § 87(2)(b) arrest photo documents these bandages (BR15). The medical treatment of prisoner report also documents that he sustained lacerations to his head (BR16). § 87(2)(b) reported that he sustained lacerations on his lip from having been kned in the face. His arrest photo and photos taken by NYPD and attached to a TRI report reveal no apparent injury to the area around his mouth (BR17). He reported abrasions to his right ankle from having been stepped on. A photo attached to a TRI report depicts redness to his right foot and a bandage which has been removed. § 87(2)(b) reported bruising to his ribs.

Cell phone video posted to YouTube shows Lt. Sample initiating the arrest of § 87(2)(b) by grabbing his left arm. A SnagIt copy of the video is placed below. § 87(2)(b) begins moving up the street and falls to the ground while he is being held by Lt. Sample and PO Odea. Once on the ground, multiple officers are over § 87(2)(b) PO Odea is on top of § 87(2)(b) torso.

PO Odea does not appear at any point to strike § 87(2)(b). However, at various points PO Odea is obstructed by other officers and the camera points away from the struggle. § 87(2)(b) ends up face up and is kicking his legs. At a later time, § 87(2)(b) is facing down but has risen to a position where he is on his knees. Throughout, multiple officers are seen unsuccessfully trying to pull § 87(2)(b) arms behind his back. At the 00:52 minute mark in the clip below, PO Hernandez is seen placing § 87(2)(b) legs on top of each other before stepping on his right ankle. § 87(2)(b) legs are not moving right before this occurs. At the 01:45 minute mark in the clip, § 87(2)(b) shifts his torso away from PO Odea. PO Odea proceeds to place his knee somewhere near § 87(2)(b) head. Someone in the crowd exclaims “Look at his head.”



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PO Odea denied ever striking § 87(2)(b) in the face or ribs with his knee (BR18). PO Odea testified that § 87(2)(b) was squirming his body which prevented officers from controlling him and getting him handcuffed. PO Odea placed his knee on § 87(2)(b) upper back to stop him from moving. PO Odea denied that he placed his knee atop § 87(2)(b) head but acknowledged that part of his leg may have been incidentally touching § 87(2)(b) head when he placed his knee on his back.

Lt. Sample acknowledged drawing his Taser and telling § 87(2)(b) that he was going to Taser him. Lt. Sample described that he originally intended to Tase § 87(2)(b) because of his physical resistance and told § 87(2)(b) that he was going to do so. Lt. Sample reconsidered and did not Tase him out of concern that it would create a more hazardous situation with the crowd behind him.

PO Hernandez acknowledged stepping on § 87(2)(b) ankle. PO Hernandez did this because he noticed that § 87(2)(b) had been kicking his legs while officers were trying to get him handcuffed. PO Hernandez stepped on § 87(2)(b) ankle to stop him from kicking. PO Hernandez used his feet to achieve this result because he feared being kicked in the face if used his hands to do so.

In addition to Lt. Sample, PO Odea and PO Hernandez, Sgt. Stephen Feasel, PO Brendan Lherisson, PO Jessica Figueroa of the 19th Precinct were all identified as officers being involved in the struggle to get § 87(2)(b) handcuffed. The officers all denied seeing anyone or did not recall seeing any officer strike § 87(2)(b) in the face or ribs with his knee (BR19-21).

PG 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.

PG 221-08 states that a conducted energy weapon should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present. Active resistance is defined to include physically

evasive movements to defeat a member of the service's attempt to control, including bracing, tensing, pushing or verbally signaling an intention to avoid or prevent being taken into or retained in custody (BR22).

§ 87(2)(g) [REDACTED]

[REDACTED]

[REDACTED]

Allegation G – Abuse of Authority: At the 19th Precinct stationhouse, Lieutenant Kevon Sample threatened § 87(2)(b) with the use of force.

§ 87(2)(b) testified that he was brought to the stationhouse and was being processed in front of the desk. Lt. Sample and § 87(2)(b) continued to antagonize each other in front of the desk. Lt. Sample told § 87(2)(b) “So you wanna go in a back room? You wanna go in a backroom and finish this? You wanna tussle like a man and finish this out? You wanna talk like a man in the back?” § 87(2)(b) interpreted this to mean Lt. Sample wanted to fight him. Lt. Sample and

§ 87(2)(b) continued to antagonize each other verbally until § 87(2)(b) decided to ignore him.

The desk officer, Sgt. Jayson Evert, testified that § 87(2)(b) arrived at the stationhouse and was being loud and obnoxious because he was screaming and being disorderly (BR23). Lt. Sample was telling § 87(2)(b) to stop talking and to be quiet. § 87(2)(b) continued yelling but Sgt. Evert did not remember what he was talking about. Lt. Sample did not respond to § 87(2)(b) in any other way besides telling him to be quiet. Sgt. Evert denied that Lt. Sample threatened to fight § 87(2)(b).

Lt. Sample testified that when he arrived at the stationhouse § 87(2)(b) was in front of the desk and refused to cooperate with officers who were collecting his pedigree information. Lt. Sample described that his interaction with § 87(2)(b) was limited to him telling him to provide his pedigree information to the officers. Lt. Sample denied making any of the alleged remarks toward § 87(2)(b) and denied threatening him with the use of force in any way.

§ 87(2)(g)

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Squad: 5

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date